

# EXHIBIT 3

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
3                   CIVIL ACTION NO. 18-5629

MONIQUE RUSSELL, JASMINE  
4 RIGGINS, ELSA M. POWELL,  
and DESIRE EVANS,  
5  
Plaintiffs,  
6  
vs.  
7  
EDUCATIONAL COMMISSION FOR  
8 FOREIGN MEDICAL GRADUATES,  
9 Defendant.

1           A.       I have not. I have no part of  
2 those records.

3           Q.       Have you ever played a role in  
4 hiring any medical school graduates into  
5 residency programs?

6           A.       Yes.

7           Q.       At what residency programs?

8           A.       I served as what's known as the DIO  
9 or designated institutional official for  
10 multiple hospitals while I was VP of GME for  
11 Hospital Corporation of America.

12          Q.       Where was that located?

13          A.       There were several -- a multitude  
14 of hospitals.

15          Q.       You can take a minute to explain  
16 just briefly so I understand.

17          A.       Yes. I served for what was known  
18 as HealthONE, which were hospitals in the  
19 greater Denver area; for -- what was the  
20 hospital called -- a hospital in Kansas City.  
21 I'm totally blanking.

22          Q.       Your C.V. is there in case it's  
23 helpful for you.

24          A.       Yeah. I'm trying to remember the

1 name of the one. So it was Research Medical  
2 Center in Kansas City which oversaw the --  
3 included the hospitals in the Kansas City area  
4 that were owned by HCA, Ogden Regional Medical  
5 Center which included the Salt Lake City  
6 hospitals owned by HCA and Eastern Idaho  
7 Regional Medical Center.

8 Q. Were the residency programs  
9 involved in those medical centers only about  
10 pediatric emergency or critical care?

11 A. No, they were not.

12 Q. All right. So it was a broader  
13 range of residency programs?

14 A. Yes, it was.

15 Q. Was it the full range of residency  
16 programs available at those hospitals?

17 A. I'm not sure what you mean.

18 Q. Yeah. So I'm not trying to ask you  
19 a trick question in any sense. I'm just trying  
20 to understand in your role as DIO for these  
21 organizations that we were just referring to,  
22 were you overseeing the admission to the  
23 residency programs for all the residency  
24 programs that those facilities offered at any

1 given time?

2 A. I was involved -- the decision is  
3 the program director's, but I oversee the  
4 processes, procedures, and the program  
5 directors.

6 Q. Have you ever served as the program  
7 direct for any residency programs?

8 A. No, I have not.

9 Q. Have you ever interviewed anybody  
10 applying to a residency program?

11 A. Yes, I have.

12 Q. Approximately how many times?

13 Hundreds? Five? You know, somewhere --

14 A. Probably not hundreds, but close to  
15 it.

16 Q. Okay. So a large number of times?

17 A. Yes.

18 Q. In your experience -- in your  
19 various roles, was an interview always involved  
20 before a resident would get offered a residency  
21 program as far as you're aware?

22 A. In most cases, the last step after  
23 all the screening that is done, you know,  
24 verification of board scores, eligibility for

1                   What else, in your experience, is  
2 involved in the offering of a residency  
3 position to a resident?

4                   A.       The initial screening is done to  
5 make sure that the person is eligible for  
6 residency. So presence of medical school  
7 graduation, confirmation, or ECFMG  
8 certification.

9                   So it's sort of that's the first  
10 step. If they don't graduate medical school or  
11 they don't have an ECFMG certification, the  
12 process would stop.

13                  Q.       Okay.

14                  A.       Following that process, one that  
15 has letters of reference, Dean's  
16 recommendation, board scores; and there's  
17 usually a cutoff to determine of those who then  
18 obtain an interview.

19                  Q.       When you say "of those," you mean  
20 cutoff of the board scores?

21                  A.       Board scores, letters of reference,  
22 recommendations.

23                  Q.       Any other information collected or  
24 reviewed in connection with residency program

1 applications that you recall, you know, sitting  
2 here today?

3 A. Usually not, no.

4 Q. Is there usually an application  
5 form, like, they actually fill out like a job  
6 application?

7 A. They don't anymore. It's all done  
8 through the electronic system called ERAS.

9 Q. Okay. Previously, do you know  
10 whether there had been applications to  
11 residency programs in, say, the 2011 time  
12 frame?

13 A. There would have not been. They  
14 would have all been ERAS.

15 Q. Even then?

16 A. Yes.

17 Q. In your experience, do residents  
18 get paid?

19 A. Yes, they do.

20 Q. Do they get paid through any  
21 sources of funding in particular?

22 A. The hospital pays them.

23 Q. Does the hospital typically  
24 withhold taxes?

1 A. Typically, yes.

2 Q. When you say "typically," do you  
3 know of any circumstances when they don't  
4 withhold taxes?

5 A. I believe it's different -- sorry.  
6 Hospitals employ them or the university  
7 sometimes does. Withholding is done as would  
8 be per whatever the employment standards are  
9 for taxes and other fees.

10 Q. Which would require, in addition to  
11 other potential information, a social security  
12 number?

13 A. That is correct.

14 Q. Do you know what the source of the  
15 social security number is for residents coming  
16 into residency programs? So I can say that  
17 another way. Strike that. Let me restate  
18 that.

19 Do you know from where the  
20 residency programs get the social security  
21 number for the applicants coming to them?

22 A. Again, I'm not involved in the HR  
23 department, but my understanding is it comes  
24 from the applicant.

1 Q. In your experience in hiring  
2 residents or residency programs, what, if  
3 anything, was done with the letters of  
4 reference that were submitted?

5 A. Letters of reference are submitted  
6 through ERAS and then become part of an  
7 electronic file that the program director can  
8 review.

9 Q. Do you know if anything else was  
10 done typically other than just review them?

11 A. Typically they're just read by the  
12 residency director. Sometimes they would also  
13 be read by an interviewer prior to an  
14 interview.

15 Q. Do you know if there was anything  
16 done typically to validate that the letters of  
17 recommend were legitimate?

18 A. I know that -- I've never -- I've  
19 never seen a residency program do it, and I do  
20 not believe that ERAS's normal procedures --  
21 sorry -- are to verify them.

22 Q. You mentioned a Dean's  
23 recommendation. What is that?

24 A. So for graduates of U.S. medical

1 schools, typically the Dean writes a letter for  
2 every graduate, which summarizes their medical  
3 school experience and provides evaluation of  
4 the student.

5 Q. And for U.S. medical school  
6 graduates, you said that as an initial  
7 screening for eligibility, there would be  
8 verification of medical school graduation; is  
9 that correct?

10 A. Correct.

11 Q. How would that usually be  
12 accomplished in your experience?

13 A. Through the ERAS process.

14 Q. What do you mean by that?

15 A. The programs themselves don't do  
16 it. It's done in the ERAS system. So that's  
17 the program that the residents apply through,  
18 and that program does the verification of the  
19 medical school.

20 Q. For lack of a better term, is it  
21 like a portal you can log into and check or  
22 how --

23 A. It's a portal you can log into and  
24 check.

1 Q. Do you still have any role or  
2 responsibilities for any residency programs?

3 A. Not directly anymore.

4 Q. When you say "not directly," do you  
5 indirectly?

6 A. I serve on a national committee  
7 with the ACGME.

8 Q. What role do you serve with ACGME?

9 A. They have a committee that oversees  
10 what's known as their clear clinical learning  
11 environment review program, and I serve on that  
12 committee.

13 Q. What does the clear committee do?

14 A. It helps them set the standards for  
15 the Clear Evaluation program.

16 Q. What is the Clear Evaluation  
17 program?

18 A. It evaluates hospitals' learning  
19 environments for residencies.

20 Q. Is that there accreditation  
21 program?

22 A. It is separate from the  
23 accreditation.

24 Q. Is it a higher level than

1 Q. So is your participation with the  
2 clear evaluation process, are you sitting on a  
3 committee of ACGME?

4 A. Committee, yes.

5 Q. Is that a volunteer position?

6 A. Yes, it is.

7 Q. And when did you begin that?

8 A. I believe about a year and a half  
9 ago.

10 Q. Any other current involvement in  
11 residency programs?

12 A. Not direct, no.

13 Q. Not directly, but anything else  
14 indirectly?

15 A. I still have academic appointments  
16 at Columbia University in New York -- sorry,  
17 Colorado university and New York Medical  
18 College. So I could be asked to give a lecture  
19 from time to time within Colorado or in  
20 New York to residents.

21 Q. Do residents typically get  
22 lectures?

23 A. Yes.

24 Q. So just so that I understand, would

1           A.       As chief medical officer with  
2     Sky Ridge and my prior role with Westchester  
3     Medical Center as chiefs of services, in some  
4     cases, I would have directly been hiring staff  
5     members for my department. In more senior  
6     leadership role, I may have been more involved  
7     in not hiring, but contracting groups to  
8     provide physicians or occasionally involved in  
9     recruitment of certain, you know, high-need  
10    specialties.

11          Q.       When you refer to staff members  
12     just now, were you talking about physicians?

13          A.       Yes.

14          Q.       In your experience, can you just  
15     briefly explain what's involved in the  
16     interviewing and hiring of a physician?

17          A.       Highly variable depending on who it  
18     is and which role. So very different.

19          Q.       In your experience, do the  
20     hospitals do any sort of background check or  
21     identification confirmation of any sort when  
22     hiring a physician?

23          A.       At the -- it depends on the  
24     facility. You know, when -- some facilities

1 you're being asked to provide?

2 A. I believe it was on my expectations  
3 from of ECFMG's certification of a physician as  
4 it relates to its use, you know, within  
5 hospitals of privileging, credentialing,  
6 residency application.

7 Q. Would you consider yourself an  
8 expert on policies and procedures for  
9 organizations like ECFMG, USMLE, and the like?

10 A. I would consider myself an expert  
11 on verification of medical school credentials  
12 and the use of them.

13 Q. Would you consider yourself to be  
14 an expert on ECFMG's policies and procedures or  
15 USMLE policies and procedures for entities like  
16 that?

17 A. I would, yes, on the processes,  
18 yes.

19 Q. When's the last time you reviewed  
20 USMLE's policies and procedures?

21 A. I probably looked over what's  
22 publicly available when I was involved with  
23 residencies.

24 Q. Have you ever discussed USMLE

1 BY MS. McENROE:

2 Q. How do you evaluate the standard of  
3 care that you say is applicable to ECFMG'S  
4 certification process?

5 A. Sure. One is how they hold  
6 themselves out; but two, there are other  
7 entities that, as part of their process, are  
8 required to verify medical school completion.  
9 That would be licensing boards, hospitals for  
10 part of the -- sorry, not process of  
11 privileging -- credentialing process for which  
12 there are accepted standards by Joint  
13 Commission, Centers for Medicaid Services.

14 Q. So those other -- in the second  
15 category, those others you're saying are  
16 required to verify medical school credentials,  
17 they also are verifying graduates' medical  
18 credentials as well?

19 A. Correct. For a U.S. medical  
20 graduate, you're required to do primary source  
21 verification.

22 Q. I thought you had said that took  
23 place through ERAS?

24 A. For credentialing and privileging,

1 ERAS is not part of the credentialing and  
2 privileging. That's for residents.

3 Q. And do you know whether  
4 credentialing and privileging uses ECFMG  
5 certification as opposed to how you U.S.  
6 graduates no longer use ERAS at that point in  
7 the process?

8 A. So for credentialing, you would do  
9 primary source verification for an American  
10 grad -- sorry, U.S. grad; and for a foreign  
11 grad, you use ECFMG to attest to the primary  
12 source verification.

13 Q. Do you know that that's true for  
14 all hospitals?

15 A. That is Joint Commission and CMS's  
16 accepted approach.

17 Q. So that's accepted if a hospital  
18 were to primary source verify themselves, you  
19 don't think that would be sufficient?

20 A. For a foreign grad?

21 Q. Yeah.

22 A. As far as I know, they could; but  
23 hospitals in the U.S., the standard is to use  
24 ECFMG. I don't know of a prohibition against

1 them doing it.

2 Q. So you're applying the standard of  
3 care that you view to be the standard of care  
4 that applies to U.S. applicants?

5 A. To verification of medical school  
6 graduates.

7 Q. To the application -- to the  
8 verification of U.S. medical school graduates;  
9 is that what you're saying?

10 A. To the standard that, yeah, primary  
11 source would be done.

12 Q. For U.S. graduates?

13 A. Predominantly for U.S. graduates,  
14 yes.

15 Q. When you say "predominantly," I'm  
16 just trying to understand is there some other  
17 measure you're using for anyone other than  
18 ECFMG to measure the standard of care for ECFMG  
19 for foreign medical graduates?

20 A. What I'm saying is I'm using the  
21 standard as applied -- that others use to do  
22 the primary source verification.

23 There are multiple processes that  
24 use primary source verification. In the

1 setting of foreign grads, ECFMG does it for  
2 foreign medical school graduation. And I'm  
3 using the standard within healthcare for  
4 primary source verification, examples being  
5 credentialing as one of them.

6 Q. Are you using as a standard of care  
7 any other entity's primary source verification  
8 for foreign medical graduates?

9 A. Other sources? No.

10 Q. Other than poking around on ECFMG'S  
11 website and documents provided to you by  
12 counsel in this case, do you have any other  
13 basis to understand or know the policies and  
14 procedures ECFMG had in place at the relevant  
15 time?

16 A. The only information I have is from  
17 ECFMG'S website and what was provided via  
18 counsel to counsel.

19 Q. You didn't do any other  
20 investigation into ECFMG'S policies and  
21 procedures?

22 A. I did not.

23 Q. We've discussed a little bit  
24 earlier -- I know some of the names get a

1 to be documented, articulate how the process of  
2 certification occurs should be documented.

3 Q. And on what basis are you saying  
4 that?

5 A. As what I -- as a standard that  
6 would be followed for a certifying body.

7 Q. What kind of certifying body?

8 A. There are a multitude of certifying  
9 bodies, those that do board certification,  
10 those that do residency accreditation.

11 Q. Do you consider yourself to be an  
12 expert on ECFMG'S policies and procedures?

13 A. I'm not sure what you mean by that;  
14 but since at the time they apparently, as far  
15 as I know, didn't have them, I'm not sure what  
16 you mean by an expert on them.

17 Q. Are you considering yourself to be  
18 an expert on the way ECFMG conducted themselves  
19 in the 1990s?

20 A. I'm not -- I'm not ECFMG. I'm  
21 saying I consider myself to be knowledgeable  
22 about at that time what the standard would be  
23 for primary source verification, which is the  
24 function they achieved and held themselves out

1 for international medical graduates and what a  
2 certification body should do to memorialize  
3 their policies and procedures to assure it  
4 meets standards.

5 Q. When you say "a certification  
6 body," what sort of certification bodies do you  
7 have personal experience with?

8 A. Certification bodies? Well, I've  
9 worked, obviously, within -- we -- within  
10 hospitals, we do certification of physicians'  
11 credentials and privileges.

12 I've worked ACGME about residency  
13 certification.

14 I've worked with professional  
15 organizations for fellowship certification.

16 Q. So those are at different stages in  
17 the medical career progression timeline, if you  
18 will; is that correct?

19 A. They are at different stages, yes.

20 Q. Have you ever had any role or  
21 involvement with some of the threshold, if you  
22 will, issues as you had articulated it before  
23 for authentication of graduate -- or of medical  
24 school graduation status?

1 articulated earlier on, about figuring out  
2 whether an international medical graduate had  
3 actually graduated from medical school?

4 A. So again, in terms of terminology,  
5 credentialing is obviously specific to an  
6 independent licensed practitioner in a  
7 hospital.

8 While as part of residency, we do  
9 have primary source verification either by the  
10 facility as part of our HR process or ECFMG for  
11 people entering residency.

12 Q. Okay.

13 A. And the standard has to be the same  
14 because we're held to the same standard for  
15 international as U.S.

16 So I am involved in the U.S.  
17 standard, but the ECFMG does that function for  
18 us and holds themselves out; but the standard  
19 has to be the same because the end product is  
20 the same. It's entering residency.

21 Q. How is the U.S. standard  
22 articulated? Who controls that?

23 A. For facilities, such as a hospital,  
24 we rely upon Joint Commission; Centers for

1           A.       Again, since I wasn't provided them  
2       and all I have is the draft, I can't say that.

3           Q.       So you don't know what the policies  
4       and procedures are as we sit here today?

5           A.       I just know the standard. I don't  
6       know what their -- I've asked for policies and  
7       procedures, and we haven't been provided any.

8           Q.       You say "we." You mean you haven't  
9       been provided any, correct?

10          A.       Uh-huh, correct.

11          Q.       Is it your opinion that ECFMG has a  
12       duty or an obligation to make sure that  
13       individuals it certifies never break the law?

14          A.       Again, I personally believe -- this  
15       is from my expertise and knowledge -- that  
16       ECFMG'S role is not as a law enforcement agency  
17       but a certification body.

18          Q.       Okay. And so I just want to make  
19       sure I understand.

20                   So if ECFMG certifies someone and  
21       they go on to commit tax fraud later on in  
22       their career, would you then look back and hold  
23       ECFMG accountable that they should have figured  
24       that out?

1           A.       No. But if in order to practice  
2 tax, they needed ECFMG certification to be  
3 licensed, then they would have never been  
4 allowed to practice tax.

5                   So I don't -- I don't hold them  
6 accountable to law enforcement; but anything  
7 that an individual was allowed to do based on  
8 their certification, they do have culpability  
9 in that case.

10          Q.       So you think if a practitioner, a  
11 physician, goes on to be a creep, a sexual  
12 predator, is that somehow ECFMG'S fault if  
13 ECFMG had certified that that person had, in  
14 fact, graduated from medical school and passed  
15 exams?

16          A.       Well, what they did was their  
17 action at that point; but one has to  
18 acknowledge that if ECFMG did not allow them  
19 to -- did not certify them, allowing them to  
20 obtain a license, they would not be a physician  
21 at that point.

22          Q.       Right. But there are U.S. graduate  
23 physicians who go on to become creeps, right?

24          A.       There are.

1 Q. Sexual predators.

2 MR. VETTORI: Is that a technical  
3 term?

4 MS. McENROE: I changed it to  
5 sexual predators.

6 BY MS. McENROE:

7 Q. Okay. Is that fair?

8 A. There are, yes. Unfortunately,  
9 yes.

10 Q. And do you deem that to be a  
11 failure of the medical school community or, you  
12 know, or is that that practitioner's fault that  
13 they went on to be somebody who breaks the law?

14 A. It is the practitioner's fault, but  
15 there is well documented studies that show that  
16 there are usually red flags throughout their  
17 career if people intervene, that patient would  
18 have never been harmed.

19 Q. Usually, like, while they're  
20 actually practicing medicine.

21 A. No. There's throughout their  
22 entire career. There's well documented studies  
23 that show whether it's medical school  
24 residency, application processes, there are

1 links throughout a career that could have  
2 stopped a progression of events.

3 Q. So I'm just struggling with the  
4 idea that this is like the ultimate Monday  
5 morning quarterbacking, right? You're saying  
6 this person ended up being a sexual predator.  
7 So looking back in history, we could pick up  
8 bread crumbs where someone could have, said,  
9 you don't graduate from middle school; you  
10 don't graduate from high school; you don't  
11 graduate from college.

12 So I'm just trying to understand --  
13 MS. McENROE: Let me finish my  
14 question.

15 MR. VETTORI: I am.

16 BY MS. McENROE:

17 Q. I'm just trying to understand how  
18 it is you pick where in that line you assume  
19 and assign all of the fault, as you have with  
20 ECFMG in this case?

21 MR. VETTORI: Objection as to form.

22 THE WITNESS: Where I've assigned  
23 fault is the area I was asked to opine on,  
24 which is he would not have been able to

1 obtain licensure or enter a residency had  
2 ECFMG done the due diligence, picked up  
3 the red flags and not certified him or  
4 revoked the certification.

5 BY MS. McENROE:

6 Q. So does your opinion basically boil  
7 down to an on/off switch, that if ECFMG had  
8 said he couldn't get a certificate, therefore,  
9 he wouldn't have been able to practice  
10 medicine; is that what you're saying?

11 A. Well, as part of application for  
12 residency and licensure, there are certain  
13 things that are binary, yes or no; and in the  
14 absence of them, you don't proceed to any other  
15 steps.

16 ECFMG certification is a credential  
17 that's binary. You don't have it, you can't  
18 get into residency. Absent ECFMG  
19 certification, you can't be licensed. It is a  
20 binary, that all the other things downstream  
21 don't occur towards licensure if that binary  
22 doesn't occur.

23 Q. So if we were to take a step  
24 forward and say graduation from a residency

1 program is binary, off and on or, you know, one  
2 year of supervised practice, however you had  
3 described it is binary off and on, you either  
4 have that or you don't, that's another place  
5 along the line, right? That would either  
6 on/off shut off the practicing medicine in the  
7 United States?

8 A. It depends on what the requirements  
9 were.

10 Q. And further stepping down the line,  
11 eventually getting to the point of getting a  
12 medical license is also off and on that in any  
13 given jurisdiction, if you don't have a medical  
14 license, you should not be lawfully be  
15 practicing medicine, correct?

16 A. Yes. Without a medical license,  
17 you can't practice medicine.

18 Q. So that's another off/on switch,  
19 correct?

20 A. A medical license is an off/on,  
21 yes.

22 Q. Even if you have a ECFMG  
23 certificate?

24 A. If you have an ECFMG certificate

1 but you don't have a license, yes, you cannot  
2 practice medicine.

3 Before you ask another question, is  
4 this an okay time to break?

5 Q. Sure. Absolutely.

6 A. I saw you reading up. I just  
7 wanted to make sure.

8 Q. Go ahead.

9 A. Thank you.

10 MS. McENROE: Let's take a break.

11 (Discussion held off the record.)

12 THE VIDEOGRAPHER: The time is  
13 2:10 p.m., and we are going off the  
14 record.

15 (Whereupon, a short break was  
16 taken.)

17 THE VIDEOGRAPHER: The time is  
18 2:20 p.m., and we are back on the record.

19 BY MS. McENROE:

20 Q. We were just looking at your expert  
21 report at Exhibit 4 before we went off the  
22 record.

23 Do you recall that, Dr. Markenson?  
24 A. Yes.

1 Q. And on page 4, there is a, sort of  
2 the second full paragraph down, if you will --  
3 it's just one line. It says, "ECFMG breached  
4 the standard of care in, among others, the  
5 following ways."

6 Do you see that?

7 A. Yes, I do.

8 Q. And then there's a number of  
9 entries, all starting with the word "failing"  
10 on the rest of page 4 and at the top of page 5.

11 Do you see that?

12 A. Yes, I do.

13 Q. And are those each an opinion that  
14 you're offering in this case?

15 A. Yes, that is.

16 Q. Okay. And we talked about the  
17 standard of care a few minutes ago.

18 Were you referring to the same  
19 standard of care here that you have been  
20 previously in your report?

21 A. Yes.

22 Q. Okay. I'm not going to go through  
23 every single one because some of them  
24 conceptually we've talked about already, but

1 I'm going to talk about a couple of them just  
2 to make sure I understand.

3 So the third failing down, if you  
4 will -- I don't have a better way to refer to  
5 it -- says -- oh, no, you know what, we talked  
6 about that one already.

7 Keep on going down to the one that  
8 talks about the diploma from the University of  
9 Ibadan. It says, "Failing to reasonably  
10 investigate Akoda's diploma from the University  
11 of Ibadan."

12 Do you see that?

13 A. Yes.

14 Q. That looks like the fifth one down.

15 A. Correct.

16 Q. Which diploma are you talking about  
17 because I don't believe I've seen a diploma  
18 from the University of Ibadan with Akoda's name  
19 on it?

20 A. Let's see. Can I go back to the --

21 Q. Sure. You can look at the exhibits  
22 we were looking at.

23 A. Thank you so much. Yeah.

24 I am wondering whether that is --